IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3460 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNITED INDIA INSURANCE CO LTD

Versus

HEIRS OF DECD.NAVALSINH BALUBHA

Appearance:

MR PV NANAVATI for Appellant

MS PAURAMI B. SHETH for Respondent No. 1 to 5

Respondents No. 6 and 7 served

CORAM : MR.JUSTICE A.R.DAVE

and

MR.JUSTICE J.R.VORA

Date of decision: 14/03/2001

ORAL JUDGEMENT (Per : MR.JUSTICE A.R.DAVE)

1. Though served nobody appears on behalf of respondents No. 6 and 7. At the request of the learned advocates appearing for the parties, the Appeal is finally heard today.

2. In this Appeal, the Appellant - Insurance Company has challenged the validity of the Award dated 5th May, 2000, passed below Ex.5 in Motor Accident Claim Petition No.354 of 1999. The said application was filed under the provisions of Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act"). By virtue of the impugned Award, it has been directed that the appellant Insurance Company should pay a sum of Rs. 6,12,492 to respondents No.1 to 5, who are the claimants in the said Motor Accident Claim Petition.

3. It has been submitted by learned Advocate Shri V.P. Nanavati appearing for the appellant that the amount which has been awarded is on the higher side. If, ultimately, in the Motor Accident Claim Petition No.354 of 1999 which has been filed under the provisions of Sec. 166 of the Act, lesser amount is awarded to the claimants, who are respondents No. 1 to 5 herein, it wiould be very difficult for the appellant Insurance Company to recover the amount from the concerned claimants. It has been submitted by learned Advocate that there was sufficient evidence to believe that the income of the deceased was more than Rs. 5,000/- per month and, therefore, the Tribunal has committed error in considering Rs. 69,576/- as yearly income of the deceased. It has been, therefore, submitted by Mr. V.P. Nanavati, learned advocate for the appellant that the impugned award deserves to be quashed.

4. On the other hand, learned Advocate Ms. Paurami B. Sheth appearing for the original claimants and respondents No. 1 to 5 herein has submitted that the amount which has been awarded by the Tribunal in an award passed below Exh.5 is just and proper. It has also been submitted by her that in fact Application filed under Sec. 166 of the Act is pending and the concerned respondents shall try to cooperate with the Tribunal in such a way that the said application is finally disposed as soon as possible. It has also been submitted by her that the claimants are ready and willing to file an undertaking to the court that they will not withdraw the Motor Accident Claim Petition No. 354 of 1999 or they will not permit the said petition to be dismissed for default. Thus, it has been submitted by her that no harm

would be caused to the appellant if the amount which has been directed to be disbursed by the Tribunal, is permitted to be disbursed.

5. After hearing the learned advocates and looking to the facts of the case, it would be in the interest of justice to direct the Tribunal to disburse 30% of the amount deposited by the appellant in the manner in which it has been directed to be disbursed. The balance, 70% of the award amount shall be invested in any scheduled bank for a period of 5 years in the names of the claimants and Nazir of the court. The interest which might accrue on the Fixed Deposit shall be permitted to be withdrawn by the respondents claimants periodically.

6. In view of the above order, this First Appeal stands allowed to the aforesaid extent and the impugned Award is modified accordingly. No order as to costs. Record and Proceedings should be returned to the Tribunal forthwith. The sum of Rs. 25,000/- deposited by the appellant with this Court, should be transmitted to the Tribunal. Respondents No. 1 and 2 shall file an undertaking, on their behalf as well as on behalf of respondents No. 3 to 5, who are minors, that the Motor Accident Claim Petition No.354 of 1999 shall not be withdrawn or shall not be permitted to be dismissed for default and they shall cooperate with the Tribunal so that the Claim Petition can be finally disposed of at an early date. The undertaking shall be filed within four weeks from today before the Tribunal.

(A.R. Dave, J.)

(J.R. Vora, J.)

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